

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

**INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES AND
MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES AND CANADA
AFL–CIO, CLC, LOCAL 99**

and

Case 27–CB–193546

BRUCE NELSON HELTMAN

Todd D. Saveland, Esq.,
for the General Counsel.

Russell T. Monahan, Esq., and
Cook & Monahan, LLC
for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. GIANNOPOULOS, Administrative Law Judge. This case was tried before me in Salt Lake City, Utah, on August 22–23, 2017 based on charges filed by Bruce Heltman (Heltman) and a Complaint and Notice of Hearing dated June 29, 2017, alleging that Respondent International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada AFL–CIO, CLC, Local 99 (Local 99 or the Union) violated Sections 8(b)(1)(A) and 8(b)(2) of the Act. Heltman was suspended from the Union’s hiring hall on June 30, 2016, and was not reinstated until March 3, 2017. The General Counsel does not contest the legality of the suspension, but asserts Heltman should have been reinstated in October 2016—and the Union’s 5-month delay in reinstating him was arbitrary, discriminatory, and constitutes a violation. The Union argues that its actions were reasonable and proper, in order to ensure the effective performance of its representative function, and to protect its contractual relations with employers. Based upon the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the

General Counsel and Respondent, I make the following findings of fact and conclusions of law recommending that the Complaint be dismissed in its entirety.¹

I. JURISDICTION AND LABOR ORGANIZATION

The parties admit that Freeman Audio Visual, Inc. (Freeman) is a corporation with an office and place of business in Salt Lake City, Utah, engaged in the business of producing conventions, exhibits, and expositions. The parties further admit that Freeman annually performs services valued in excess of \$50,000 in states other than the State of Utah. Based upon these admissions, I find that Freeman is an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act. The Union admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

A. Background

Bruce Heltman has been a member of Local 99 since 1978, working as a stagehand, rigger, electrician, props master, and audio engineer. The Union, whose jurisdiction spans the state of Utah and southern Idaho, dispatches workers through a hiring hall to employers working across the area. In 2016, the Union had about 150 active members and an additional 300 people using the hiring hall to fill work calls. Heltman, who described himself a “theatrical engineer,” testified that he was qualified to perform virtually all the work dispatched out of the hiring hall.² (Tr. 15–16, 22–23, 244).

Most of the Union’s collective-bargaining agreements require employers to first obtain their labor from the hiring hall, before going to outside sources. The evidence shows the Union had exclusive hiring hall agreements with at least two employers in the area. (Tr. 169, 257; GC Exh. 22, 23).

Local 99 generally has three full-time employees: a business agent, office manager, and dispatcher. The business agent, which is an elected position, is responsible for the overall operation of the hiring hall. Murray Ennenga was the business agent from December 2010 until November 2016, when he was replaced by Jim Phillips. All other union officials, including the president, are employed through the hiring hall and work only part-time on official union matters. (Tr. 171, 244, 271, 273).

The Union has an executive board and infractions committee, which are made up of the same people, to help manage the organization.³ Both committees meet before the monthly membership meeting. Individuals who have been fined, or have received an infraction for their

¹ Unless otherwise noted, witness demeanor was the primary consideration used in making credibility resolutions. Testimony contrary to my findings has been discredited.

² Transcript citations are denoted by “Tr.” with the appropriate page number. Citations to the General Counsel and Respondent Exhibits are denoted by “GC Exh.” and “R. Exh.” respectively. Transcript and exhibit citations are only intended as an aid, as factual findings are based upon the entire record as a whole.

³ The executive board and infractions committee are made up of the union president, the various vice presidents, the business agent, and the recording secretary. (Tr. 182, 261).

behavior on a job, can appeal the violation to the infractions committee. They can appear before the committee, explain the surrounding circumstances, and if an adequate explanation is offered, the infractions committee can cancel or void the violation. After the infractions committee finishes its meeting, the executive board meets to discuss matters relevant to the overall membership which may be discussed in a general membership meeting. (Tr. 179–83, 261).

B. Heltman’s behavior at work during the first half of 2016

Starting in about the spring of 2016, Heltman’s behavior at work became increasingly erratic and caught the eye of union officials. He was experiencing some personal and medical issues which were affecting his work. Up until this time, Heltman generally had an uneventful work record, having never previously been suspended or fined by the Union. (Tr. 28–36, 273).

In March 2016, union business agent Ennenga disciplined Heltman for leaving a dispatched job to work on another show as a steward. In May 2016, Heltman was involved in a bizarre incident where he was found operating a boom lift, working on electrical items, in his bare feet.⁴ Heltman was ultimately fired from this same job because he was accused of harassing a woman working as a makeup artist. Heltman, who was working as the head electrician on the show, went to the makeup booth to drop something off and had some sort of interaction with the makeup artist. She complained to the show’s producers who were upset and contacted the Union steward on the job. The steward told Heltman to stay away from the makeup booth, and to not speak with the makeup artists—even if he only wanted to apologize to her. Notwithstanding these specific instructions, Heltman saw the makeup artist the next morning on the loading dock, walked over to her, and started speaking—wanting to apologize. The show’s producers learned of the interaction and fired Heltman, telling the Union that he was to be removed from the show and escorted from the building. (Tr. 107–110, 156–160, 186, 218; GC Exh. 16; R. Exh. 6, 7).

By June 2016, Heltman testified that he “was not in a very clear state of mind.” (Tr. 27, 122) On June 2, he was assigned as the steward on a job in Deer Valley, Utah setting up the summer stage for the Utah Symphony and Opera; Deer Valley is about 40 miles outside of Salt Lake City. The job was scheduled to start at 8 a.m. However, by 10 a.m. that day, Heltman was still at home and in bed when he realized he had a voicemail from a coworker inquiring as to why he was not at work. Heltman called the number on the caller ID several times, but nobody answered.⁵ He then called his doctor to make an appointment for 10 a.m., the next morning. (Tr. 16–24).

Heltman was scheduled to work as the head electrician for The Cure concert on June 3. So around 5 p.m. on June 2, he called the Union’s dispatch office wanting to inform them that he could not work the concert and needed to be replaced.⁶ On June 3, at around 9 a.m., Heltman received a phone call from the assistant steward assigned to The Cure concert, asking why he

⁴ The lift, which can reach upwards of 40 feet, contains a hydraulic arm with a metal basket at the top; the operator stands in the lift to work the controls. (Tr. 217–218).

⁵ The number belonged to the alternate steward on the job, and Heltman ultimately left a message. (Tr. 19–20).

⁶ Heltman’s cell phone records show that he called the dispatcher at 4:57 p.m. on June 2, and that the call lasted no more than 1 minute. Although the evidence shows Heltman called the dispatcher, it is unclear as to whether he actually spoke with anybody or what occurred during the call. (Tr. 21–24, 49–50; GC Exh. 10).

was not at the jobsite. Heltman said he had a doctor’s appointment at 10 a.m. and that he got himself replaced the previous night. The assistant steward told him that nothing was put into the dispatch system, but that he would deal with the matter. (Tr. 20–25).

5 On June 8, 2016, the Union sent Heltman a letter, signed by the executive board, saying that he received an infraction for a no-show on both the June 2 Deer Valley call and the June 3 The Cure concert. According to the letter, unless the infraction was appealed, Heltman would be fined \$100 and removed from the hiring hall until the fine was paid. The letter instructed
10 Heltman to either appear before the executive board on July 11, 2016, or submit a written response to the Union’s office by the same date. Heltman did not contact anyone at the Union about the letter, as he planned to appear at the July 11 meeting. (Tr. 27; GC Exh. 2).

 Pursuant to the Union’s infraction policy, a “no show” results in a \$100 fine and removal from the hiring hall list until the fine is paid. A second offense results in a \$100 fine, a 2-week
15 suspension, and a mandatory appearance before the executive board. In the June 8 letter, the Union lists two separate occurrences, but fines Heltman for one infraction. (GC Exh. 5).

C. Heltman’s June 30, 2016 suspension from the hiring hall

20 In June 2016, Heltman was working as the stage manager at the Utah Arts Festival, a 4-day event that runs Thursday through Sunday.⁷ During the festival, Heltman was accused of dancing on stage wearing a Speedo and covered in body paint. Heltman denied the specific accusation, but testified that on the opening day of the festival, a dance troupe was conducting a rehearsal and playing music. Heltman, who was wearing Bermuda shorts and had some paint on
25 his hands and feet, “interacted” with the dancers on stage by doing yoga poses. Heltman resigned from the job because he could not “be creative.” Even though this job was not under the Union’s jurisdiction, Ennenga learned about the incident from union members who were working the show. (Tr. 116–119, 160–163, 298–299).

30 On June 14, 2016, Heltman was dispatched to work as head electrician for a United Concerts event at the USANA outdoor amphitheater outside of Salt Lake City. Heltman had been camping with his dog and brought the dog with him to the jobsite. He parked his truck in the stagehand parking area, a grassy section above the theater, set up a cover, and left his dog in the parking lot. Jamie Horton, the United Concerts production manager, learned about the dog
35 and told Heltman to go home, dismissing him from the job. Later that evening, it was discovered that somebody spray painted the inside door to the venue’s electrical room and on the inside wall, in chalk, drew a paw print and wrote the words “dog poo.” Horton called Thomas to discuss Heltman’s behavior, and also told him about the vandalism in the electrical room. Thomas was concerned and did not want to disrupt the Union’s relationship with United
40 Concerts, one of the hiring hall’s largest and oldest clients, which produces at least 100 concerts a year within the Union’s jurisdiction. (Tr. 69–72, 112–113, 119–120, 234–237; R. Exh. 11).

 On June 25, Heltman sent Horton a text message saying that Horton’s concern was appreciated, but that he did not appreciate being judged for how he treated his dog. Heltman
45 went on to say that Horton owed him about \$400 for lost pay. Heltman asked for payment in

⁷ Heltman had worked as the stage manager for the event the previous 12 years. (Tr. 117).

“cash and in addition four pairs of NICE tickets to concerts of my choice.” (R. Exh. 3) Heltman testified that he asked for the cash because he felt that he was owed 1 day’s pay, as in his opinion he should not have been sent home. As for requesting the concert tickets, Heltman testified “[t]hat was in my state of confusion.” (Tr. 102–103, 113–114, 119–122).

On June 30, James McNeil, the president of United Concerts, sent a letter to the Union to “voice [his] concerns about Bruce Heltman.” McNeil’s letter stated that, because of Heltman’s recent actions, he was no longer welcome to work at the USANA amphitheater, “or any other United Concerts shows, until his personal issues are resolved.” (R. Exh. 2).

That same day, Ennenga along with other members of the Union’s executive board met and discussed Heltman. Based upon the incidents over the preceding few months, the Union believed that Heltman was a danger to himself and to the people he was working with. The Union was concerned with what they believed was a pattern of erratic and strange behavior. Therefore, it was decided that Heltman would be suspended and he would be asked to appear before the executive board on July 13 to discuss the suspension and “get his point of view.”⁸ (Tr. 297–300).

On June 30, Ennenga sent Heltman a letter informing him of the suspension. The letter reads as follows:

I am placing you on temporary suspension from [the] Local 99 Hiring Hall. You have the right to appeal this before the E-board on Wednesday July 13th. I have reached this decision because of your recent infractions and behavior. We have had no shows, removal from calls, harassment, and vandalism, disappearing from calls and trying to extort an employer. You have become increasingly undependable and erratic. I feel you are a danger to not only yourself but others.

Heltman received the letter by email, and got a hard copy in the mail a few days later.⁹ When Heltman received the suspension letter, he was hurt, offended, and found the letter “insulting.” (Tr. 27–28, 38–39; GC Exh. 3).

D. Heltman’s response to the infraction and suspension

Heltman’s infraction letter instructed him to either file a written response or appear in person, at the July 11 executive board meeting, and his suspension letter instructed him to appear before the executive board on July 13. Heltman did not appear at any meeting of the executive board in July 2016, nor did he file a written response to the infraction. Heltman testified that he did not attend the July 11 meeting because he was angry, depressed, and believed that the

⁸ The ultimate decision to suspend Heltman was Ennenga’s. Before suspending Heltman, Ennenga spoke with McNeil at United Concerts. (Tr. 274, 297–98).

⁹ The Union’s hiring hall rules were introduced into evidence, however they do not discuss suspension from, or reinstatement to, the hiring hall. Local 99’s infractions policy was also introduced into evidence. The infractions policy states that suspension is possible for various multiple infractions, but does not discuss reinstatement to the hiring hall after a suspension. The only discussion of reinstatement involves reapplying to the hiring hall after the Union has deemed an individual to have resigned their membership in the hiring hall. (Tr. 31–32; GC. 5, 31; R. 4).

individual union officials had been harassing him for years; he did not explain why he did not attend the July 13 meeting.¹⁰ (Tr. 34–35, 148, 300).

Instead, on July 9 Heltman drafted and subsequently filed internal charges against the executive board alleging various violations of the Union’s constitution and bylaws, along with violations of Federal statutes. Heltman testified that he was upset at the executive board for allowing Ennenga to suspend him. The Union sent Heltman a letter confirming receipt of the charges, and a committee was formed to determine whether they were meritorious.¹¹ (Tr. 39–42, 45, 177–178; GC Exh. 6, 7).

Meanwhile, Heltman was still suspended. In August 2016 Heltman hired a lawyer to advise him on his dispute with the Union; the attorney advised him to pay the fine. On August 20, Heltman went to the Union hall, paid his \$100 fine, and got a receipt from the office manager. (Tr. 46–49; GC Exh. 9).

After paying the fine, Heltman was not reinstated to the hiring hall; he still had not met with the executive board as discussed in his suspension letter.¹² On September 9, Heltman delivered a letter to the Union stating that he would be unable to attend the September 12 executive board meeting because of a previous work commitment. He also enclosed a letter from his doctor saying that Heltman had been testing a new medication, which may have caused him to miss the June 2 work call at Deer Valley. The doctor’s letter also asked that Heltman’s absence on June 3 be excused because they had an appointment to discuss the medicine he was taking. Heltman further enclosed a copy of his cell phone bill showing that he called the dispatcher just before 5 p.m. on June 2. (Tr. 49–50; GC Exh. 10).

Heltman did not receive a direct response to his September 9 letter. Instead, he received a letter dated September 30 from the Union stating that the committee investigating his July 2016 internal charges found that they were without merit. (GC Exh. 11, Tr. 52).

E. The October 2016 executive board meeting

The Union’s next scheduled executive board meeting was on October 3; Heltman decided to attend this meeting. Executive board meetings are held at 2 p.m., so Heltman arrived early to ensure that he would be the first on the schedule – however he never informed anyone beforehand that he would be attending. Thomas and Stephens were the only members of the Union’s leadership team present that day. Heltman’s appearance was unexpected, and both were surprised by his attendance. Using his cell phone, Heltman recorded the meeting, and the recording was introduced into evidence. (Tr. 53, 242; GC Exh. 12, 13).

¹⁰ It is unclear from the record what actually occurred at these executive board meetings. However, it is undisputed that Heltman did not attend either meeting.

¹¹ The letter also informed Heltman that another committee had denied charges he had previously filed against the Union in April 2016. (GC Exh. 7, 8, 45).

¹² Heltman knew that his problems with the Union were greater than the two no-shows surrounding his \$100 fine. (Tr. 48–49, 126).

The meeting started with the parties discussing whether the Union received various documents Heltman had previously submitted. Heltman then asked what Thomas and Stephens wanted, or cared, to know from him. Instead of waiting for an answer, Heltman then said that he was happy only two members of the executive committee were present, instead of multiple people watching him.¹³

Thomas then formally started the meeting by announcing the date and time, and saying they were present as a meeting of the infractions committee and executive board. Heltman then said that he had submitted a note from his doctor for The Cure call, but was told that he was a no-show for two calls “so I guess that’s why I’m here because that’s the infraction.” As Thomas looked up Heltman’s work file, Heltman said that he received a letter from Thomas saying he owed \$100 and “to show up at the meeting . . . so we could do the little infraction thing.” Heltman then said that he had paid the fine.

Thomas asked whether the fine was for the Deer Valley no-show, and Heltman said yes. Thomas acknowledged receiving the receipt showing that Heltman paid the fine. Heltman said that he was supposed to appear at the July meeting, but did not make it. Heltman then said that he could get copies of all his letters if the Union could not find them.

After searching through the Union’s documents, Thomas again acknowledged that the Deer Valley infraction had been paid, and asked if Heltman was saying that he had a doctor’s appointment on the date of The Cure concert. Heltman said he had a letter from his doctor and that he also called and spoke with somebody about cancelling the call. Thomas remembered seeing the doctor’s letter, but could not find it. Heltman then said “where do you want to go with it,” and Thomas asked whether Heltman could reproduce a copy of the letter. Heltman replied that his paperwork was in his car, and asked whether Thomas would “pass the hundred bucks for that,” if he brought in a copy of the letter. Thomas agreed.

Heltman said he would get them a copy of the doctor’s letter that day, so Thomas and Stephens could “move on with the rest of these guys because there is nothing else we need to talk about is there?” Thomas replied saying “not as far as that goes.” Thomas then said that he was going to send Heltman a certified letter addressing the last set of charges filed against the Union. Heltman asked whether they had his new address, and Thomas said that if Heltman gave the address to the office manager, she would send the letter to his new address. Thomas told Heltman to give a copy of the doctor’s letter to the office manager, and then escorted him out of the building. Heltman went to his car, found the paperwork, and gave a copy of the doctor’s letter to the Union’s secretary to give to Thomas. (Tr. 65–67).

Although Heltman’s meeting with the executive committee had ended, Heltman did not realize that his phone was still recording. The recording continued for an additional 22 minutes after the meeting capturing, at various points, Heltman speaking with himself or speaking to his dog. At one point, speaking to himself, Heltman exclaimed “And he does not, and you do not have authority to pass judgment . . . you’re not a doctor.” In a mocking tone he then said “I’m

¹³ Unless otherwise noted, the facts as to what occurred that day are taken from the recording introduced into evidence. (GC. 13).

going to suspend you . . . because you might have been . . . you're dangerous to yourself and others." (Tr. 67–69; GC. 13).

5 Heltman did not have any contact with the Union for the remainder of the month. He testified that he was expecting to be placed on the hiring hall list after the October 3 meeting, but was not dispatched for any calls. (Tr. 72–73).

10 Heltman did not attend the November executive board meeting nor did he inquire about his status with the hiring hall. Instead, on November 17, Heltman sent a letter to the Union, addressed to Thomas, setting forth a list of perceived grievances against him. In the letter, Heltman claims he was wrongly accused and penalized without a fair trial, and asserted the executive board was negligent in its fiduciary duties. Heltman ended the letter saying he was unable to attend the July 2016 executive board meeting, and has not received any communication regarding his suspension or when he could expect to be reinstated. Because he was not charged
15 under the Union's constitution or bylaws, Heltman wrote that he expected to be immediately reinstated. Thomas received the letter, but did not respond; instead he sent it to the Union's attorney. (Tr. 72–73, 258; GC. 14).

20 Over the next few months, there was no direct communication between Heltman and the Union. Heltman did not attend either the December 2016 or January 2017 executive board meetings. He instead relied upon his attorney to communicate with the Union. On January 16, 2017, Heltman's attorney sent Thomas a letter stating that he had been retained to assist Heltman "with the unfair labor practice he has filed against IATSE Local 99" and assist him to pursue claims alleging the Union breached its duty of fair representation. The letter goes on to state that
25 Heltman's suspension from the hiring hall was unlawful, and asserts the right to pursue legal action against the Union in Federal court, separate from any unfair labor practice charge with the Board. Finally, the Union was threatened with a lawsuit in Federal court if Heltman was not reinstated to the hiring hall by January 23, 2017. (Tr. 78–79; GC. 15).

30 The Union's counsel replied on January 20, 2017, explaining why Heltman was suspended. The letter further stated that Heltman declined to appeal his suspension to the executive board, but that the Union remained willing to reinstate him provided he appeared before the executive board to discuss his behavioral issues and the Union's expectations regarding his work performance going forward. Until such time as Heltman availed himself of
35 this process, it was the Union's position that Heltman would remain on suspension. (GC. 16).

Heltman's lawyer replied by letter dated January 25, 2017 saying, among other things, that Heltman agreed to meet with the executive board. The parties decided Heltman would meet with the executive board on February 3. However, the morning of February 3, Heltman's
40 attorney sent an email to the Union's counsel asking to reschedule because he needed to appear in court for a temporary restraining order hearing. In fact, Heltman admitted that he could not attend the meeting that day because he was in jail on a domestic violence charge. (Tr. 128–131; GC. 17, 18).

45 The parties set up a subsequent meeting for February 10, 2017 at 9 a.m. The executive board met that day as scheduled, but Heltman was not there. The executive board waited for 25

minutes – and when nobody appeared they adjourned the meeting. It turns out that Heltman and his lawyer mistakenly believed the meeting was at 10 a.m. By the time they arrived at the union hall, the meeting had ended. The next executive board meeting was on March 6, at 2 p.m. (GC. Tr. 79–80, 131; GC. 18).

Heltman arrived at the March 6, 2017 meeting with his attorney. Approximately four or five members of the Union’s executive board were present; however Thomas did not attend the meeting. Instead, he wrote a letter for Heltman and provided it to Jim Phelps, who was now the Union’s business agent. (Tr. 81, 84, 259–260; GC. 19). The letter reads as follows:

In lieu of your removal from suspension from the hiring hall, I would like to cover some key points. 1. Your, late/no show record has been reset for the year and has no infractions. 2. You will abide by the rules of the hiring hall. 3. All changes to your calls will go through the Business Agent and the dispatcher. 4. When on the jobsite you will answer to you department lead and job steward. 5. Any erratic or unsafe behavior on the jobsite will not be tolerated. If this all sounds straight, we will add you back to the hiring list.

At the meeting, Heltman told the board that he was not going to sign anything because he did not do anything wrong. The executive board then gave Heltman the letter from Thomas and asked if he agreed to everything in the document. Heltman said that he agreed, and would abide by the requirements set forth in the letter. The executive board then told Heltman that he would be reinstated. Within a couple of days, Heltman was receiving dispatches to jobs from the hiring hall. (Tr. 90–96).

III. ANALYSIS

A union’s duty of fair representation applies to the operation of an exclusive hiring hall. *Teamsters Local 631 (Vosburg Equipment)*, 340 NLRB 881, 883 (2003).¹⁴ While operating a hiring hall, a union cannot act in an unreasonable, arbitrary, discriminatory, or bad faith manner. *Id.* When a union prevents a worker from being hired through the hiring hall, it is presumed to encourage union membership and the burden shifts to the union to justify its actions. *Lucas v. NLRB*, 333 F.3d 927, 932 (9th Cir. 2003). This presumption can be rebutted by showing that the union either acted in accordance to a valid security clause or that its action was necessary to the effective performance of its function of representing its constituency.¹⁵ *Id.*; See also, *Stage Employees IATSE Local 150 (Mann Theatres)*, 268 NLRB 1292, 1295 (1984); *Stagehands Referral Service, LLC v. NLRB*, 315 F. App’x 318, 320 (2d Cir. 2009).

Here, it cannot be disputed that, in the months leading up to his suspension, Heltman’s actions were unpredictable, erratic, and disruptive. Referring ineffectual workers “certainly tarnish a union’s reputation with employers” and is a reasonable explanation for a decision to stop referring someone from a hiring hall. *Stagehands Referral Service, LLC*, 315 F. App’x at

¹⁴ Although some courts of appeals have adopted a “heightened duty” standard with respect to a union’s duty of representation in the hiring hall context, the Board has not adopted that standard. See *Teamsters Local 631 (Volsburg Equipment)*, 340 NLRB at 881, fn. 4.

¹⁵ There is no valid security clause at issue in this matter.

321.¹⁶ And, the General Counsel does not contest the legality of Heltman’s suspension or the precondition that he meet with the executive board before the suspension was lifted.¹⁷ Instead, the government asserts Heltman did what was asked of him by meeting with the executive board on October 3, 2016. Thus, according to the General Counsel, the fact the Union did not lift his suspension on that date was arbitrary, discriminatory, and in bad faith. (GC. Br., at 15–18).

However, the evidence shows that the purpose of Heltman’s meeting with the executive board in October 2016 was only to discuss the infraction relating to the two alleged no-shows as outlined in the Union’s June 8 letter. Heltman did not inform the executive board of his attendance, or the reason for his attendance. And, when the October 3 meeting formally started, Heltman raised the issue of the two no-shows and said “so I guess that’s why I’m here because that’s the infraction.” He then discussed the letter regarding the infraction and stated that he paid the fine. At no time during the meeting did Heltman say he was appearing to discuss, or appeal, his suspension. And, after telling Thomas and Stephens that he would provide a copy of his doctor’s letter excusing him from missing The Cure concert, when he asked if there was anything else to talk about, Thomas replied “not as far as that goes,” referencing the infraction.

Because the General Counsel does not contest the legality of the Union’s precondition that Heltman appeal his suspension to the executive board before it was lifted, I find there is no violation, as the evidence does not show that Heltman met this precondition when he met with the executive board in October 2016 to discuss his infraction. It is only in March 2017, after several failed attempts, that the executive committee and Heltman finally met over his suspension. And, when Heltman finally availed himself of the opportunity to attend an executive board meeting to discuss his suspension, the board asked him to affirm that, going forward, he would comport with the hiring hall rules and to affirm his understanding that erratic or unsafe behavior on the job would not be tolerated. Under these circumstances, where there is evidence of multiple instances of misconduct by Heltman leading up to his suspension, I find that the Union’s actions were reasonable and “necessary to the effective performance of its function of representing its constituency.” *Stage Employees IATSE Local 150 (Mann Theatres)*, 268 NLRB at 1295 (1984).

Accordingly, I find that Respondent did not violate Section 8(b)(1)(A) and 8(b)(2) of the Act as alleged and I recommend the complaint be dismissed.

CONCLUSIONS OF LAW

1. Freeman Audio Visual, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent, Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada AFL–CIO, CLC, Local 99 is a labor organization within the meaning of Section 2(5) of the Act.

¹⁶ Here, unlike the situation in *Stagehands Referral Service*, the General Counsel has not put forth record evidence discrediting the Union’s explanation.

¹⁷ See Tr. 10–11. *Pork King Co., Inc.*, 252 NLRB 99, 100 (1980) (Board relies upon general counsel’s declaration during opening statements as to what is and is not being alleged as a violation).

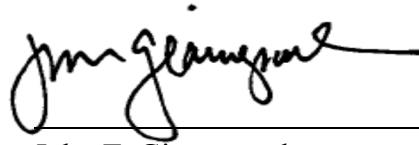
3. The Respondent did not violate the Act as alleged in the Complaint.

On these findings of fact, conclusions of law, and based upon the entire record, I issue the following recommended¹⁸

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C. December 26, 2017

A handwritten signature in black ink, appearing to read "John T. Giannopoulos", written over a horizontal line.

John T. Giannopoulos
Administrative Law Judge

¹⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.